

Applicant finally succeeded in reaching the Examiner on July 13, 2003; however, the Examiner was unable to locate the previously cited art. Applicant then was able to locate on the web a document of the same title, and sent it via email to the Examiner on July 29, 2003 to enquire whether it was the missing art. Applicant also filed a formal request for documents asking for copies of the art that should have been sent with the original Office Action on that date. The next communication from the Examiner was a Final Office Action, essentially identical to the first Office Action, mailed July 29, 2003 and basing prior art rejections upon the document that the Applicant had emailed (note that this date was earlier than three months from the request for a three-month suspension of prosecution filed on May 5, 2003).

Applicant filed a Response to the Final Office Action by facsimile on August 17, 2003 (approximately three weeks after the mailing date of the Final Office Action, and well before the two-month deadline for a guaranteed Advisory Action). This Response was sent to the Examiner's personal fax number, and Applicant confirmed with the Examiner by telephone that it had been received and would be docketed promptly.

In the ensuing months, Applicant periodically left voice mail messages for the Examiner to ask if an Advisory Action, Notice of Allowance, or other action would be forthcoming. Messages were left approximately monthly until December, when Applicant began calling weekly, and then twice weekly in January. None of these calls was ever returned. On January 12, 2004 (two and a half weeks before the six-month statutory deadline for placing the case in condition for allowance), Applicant finally reached the Examiner, who informed the Applicant that the Response had never been docketed. The Examiner promised to have the Response docketed immediately, and to send out an action in time for the Applicant to respond by the statutory deadline.

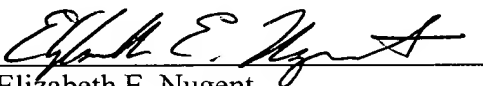
Beginning approximately January 16, 2004, Applicant began placing daily calls to the Examiner attempting to learn whether an action was being sent. In addition, Applicant left messages for the Examiner's supervisor, requesting that he look into the case. No response was received to any of these messages. Applicant finally managed to contact the Examiner's supervisor on January 28, 2004 – the day before the six-month statutory deadline. The supervisor determined that the Response, although received, had still not been docketed, contrary to the Examiner's representations on January 12, 2004.

Today Applicant has finally spoken with the Examiner. In order to prevent the application from becoming abandoned, Applicant agreed to file the enclosed Request for Continuing Examination. However, having already paid the fee for one Continuing Prosecution Application, and having responded to all rejections within three weeks of receiving the art upon which the rejection was based, Applicant feels that to charge additional fees for continuing examination would be manifestly unfair in this case.

In light of the above facts, Applicant respectfully requests that any fees paid for the Request for Continuing Examination and for this petition be refunded.

Please charge any fees associated with this filing, or apply any credits, to our Deposit Account No. 03-1721.

Respectfully submitted,



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Date: January 29, 2004

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